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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

BENJAMIN JOHN SARGISSON,

Defendant.

CASE NO. 2:22-CR-16-TLN

**STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER**

DATE: February 22, 2022
TIME: 9:30 a.m.
COURT: Hon. Troy L. Nunley

BACKGROUND

This case is set for a status conference on February 22, 2022. By this stipulation, the parties request that the Court continue the status conference to May 5, 2022, and to exclude time under Local Code T4 as well under the Court's General Orders, for the reasons set forth below, from February 22, 2022, to May 5, 2022.

On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California "until further notice." Under General Order 618, a judge "may exercise his or her authority to continue matters, excluding time under the Speedy Trial Act with reference to the court's prior General Order 611 issued on March 17, 2020 . . . with additional findings to support the exclusion in the Judge's discretion." General Order 618, ¶ 6 (E.D. Cal. May 13, 2020). In addition, any judge "may order case-by-case exceptions" to General Order 618's provisions "at the discretion of that Judge or upon the request of counsel, after consultation with counsel and the Clerk of the Court to the

1 extent such an order will impact court staff and operations.” General Order 618, ¶ 7 (E.D. Cal. May 13,
 2 2020). This and previous General Orders were entered to address public health concerns related to
 3 COVID-19.

4 Although the General Orders address the district-wide health concern, the Supreme Court has
 5 emphasized that the Speedy Trial Act’s end-of-justice provision “counteract[s] substantive
 6 openendedness with procedural strictness,” “demand[ing] on-the-record findings” in a particular case.
 7 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 8 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 9 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 10 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 11 or in writing”).

12 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 13 and inexcusable—General Orders 611, 612, 617, and 618 require specific supplementation. Ends-of-
 14 justice continuances are excludable only if “the judge granted such continuance on the basis of his
 15 findings that the ends of justice served by taking such action outweigh the best interest of the public and
 16 the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable
 17 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that
 18 the ends of justice served by the granting of such continuance outweigh the best interests of the public
 19 and the defendant in a speedy trial.” *Id.*

20 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 21 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 22 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 23 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 24 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 25 recognized that the eruption created “appreciable difficulty” for the trial to proceed. *Id.* at 767-69; *see*
 26 *also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time
 27 following the September 11, 2001 terrorist attacks and the resultant public emergency).

28 The coronavirus poses a similar, albeit more enduring, “appreciable difficulty” to the prompt

proceedings mandated by the statutory rules. Recently, the Ninth Circuit enumerated a “non-exhaustive” list of seven factors it found to be “relevant” in considering ends-of-justice Speedy Trial Act continuances “in the context of the COVID-19 pandemic.” *United States v. Olsen*, --- F.3d ---, 2021 WL 1589359 at *7 (9th Cir. Apr. 23, 2021). That non-exhaustive list includes: (1) whether a defendant is detained pending trial; (2) how long a defendant has been detained; (3) whether a defendant has invoked speedy trial rights since the case’s inception; (4) whether a defendant, if detained, belongs to a population that is particularly susceptible to complications if infected with the virus; (5) the seriousness of the charges a defendant faces, and in particular whether the defendant is accused of violent crimes; (6) whether there is a reason to suspect recidivism if the charges against the defendant are dismissed; and (7) whether the district court has the ability to safely conduct a trial. *Id.*

In light of the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4). If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, hereby stipulate as follows:

1. By this stipulation, defendant now moves to continue the status conference until **May 5, 2022, at 9:30 a.m.**, and to exclude time between February 22, 2022, and May 5, 2022, under 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4].

2. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes investigative reports and photographs. This discovery has been either produced directly to counsel and/or made available for inspection and copying. The government is also in the process of confirming whether there is additional discovery, which it will produce in the event it is identified.

b) Counsel for defendant desires additional time to review the discovery produced,

1 to consult with his client, to conduct investigation and research related to the current charges, to
2 discuss potential resolutions to this matter, and to otherwise prepare for trial.

3 c) Counsel for defendant believes that failure to grant the above-requested
4 continuance would deny him/her the reasonable time necessary for effective preparation, taking
5 into account the exercise of due diligence.

6 d) The government does not object to the continuance.

7 e) In addition to the public health concerns cited by the General Orders and
8 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in
9 this case because the defendant is out of custody and lives an appreciable distance from
10 Sacramento, where defense counsel is based. As a result, all travel must be carefully
11 coordinated, which is more difficult at this time.

12 f) Based on the above-stated findings, the ends of justice served by continuing the
13 case as requested outweigh the interest of the public and the defendant in a trial within the
14 original date prescribed by the Speedy Trial Act.

15 g) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
16 et seq., within which trial must commence, the time period of February 22, 2022 to May 5, 2022,
17 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]
18 because it results from a continuance granted by the Court at defendant's request on the basis of
19 the Court's finding that the ends of justice served by taking such action outweigh the best interest
20 of the public and the defendant in a speedy trial.

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3. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: February 22, 2022

PHILLIP A. TALBERT
United States Attorney

/s/ JAMES R. CONOLLY
JAMES R. CONOLLY
Assistant United States Attorney

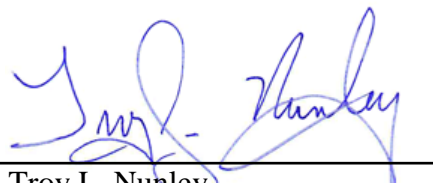
Dated: February 22, 2022

/s/ RON PETERS
RON PETERS
Counsel for Defendant
BENJAMIN JOHN SARGISSON

ORDER

IT IS SO FOUND AND ORDERED.

Dated: February 22, 2022



Troy L. Nunley
United States District Judge